Suppose that a wage earner is the victim of an automobile accident. Aside from the damages which he may receive from the person who caused the accident, the victim may expect to receive specific reparation for his medical expenses and for his loss of income caused by the accident. This reparation may come from many different sources; to these sources the present chapter is directed.

One section of the chapter will be devoted to each of the various regimes which may participate in compensating the victim; a final section will consider the extent to which the reparation sources may have recourse against the person responsible for the injury.

A. REPARATION BY SOCIAL SECURITY

In France the primary source of reparation for injury is Social Security [la Sécurité Sociale]. Every wage earner who becomes an accident victim is entitled under the law to receive reparation from the funds of Social Security, independently of any action or right of action against the tort-feasor, and regardless of the negligence of the victim himself except in cases of intentional wrong [faute intentionnelle].

What kinds and what amounts of benefits does the covered workman get from the Social Security funds? In order to answer this question, it is necessary to distinguish between "common law accidents" (that is, accidents having no connection with the
victim's employment), and "work injuries" [accidents de droit commun and accidents de travail].

1. Common Law Accidents

A common law accident is one which has no relationship to the injured person's employment. For example, a workman goes for a walk one Sunday morning, and in the course of it is struck by an automobile negligently driven by Mr. X. The Social Security system includes two types of benefits applicable to this situation—medical benefits [prestations en nature] and cash benefits [prestations en espèces].

a. Medical benefits

Medical benefits consist in the partial or total repayment of the expenses caused by the accident. These expenses consist essentially of the following:

Medical service charges of all kinds — that is, the fees of doctors, surgeons, and other attendants;
Pharmaceutical and laboratory expenses;
Hospital bills in private or public institutions;
Costs of rehabilitation and prostheses.

All these types of benefits are subject to certain general rules, as follows:

(1) The principle of direct payment by the injury victim. In general, doctors, surgeons, medical attendants, and pharmacists are paid directly by the covered injury victim [l'assuré accidenté], and not by the Social Security funds. The injury victim is supposed to pay all of the expenses in advance, and then to get reimbursed, on presentation of proof, for that portion of the expenses which is underwritten by Social Security. This rule is subject to certain exceptions and limitations. There is an exception to the principle of direct payment in cases when the medical services are rendered in public hospitals. In addition, if the injury victim is without resources, recourse may be had to local arrangements made be-
Sources of Reparation in France

The Social Security offices and the pharmacists' associations [les syndicats de Pharmaciens] for the payment of pharmaceutical expenses directly by the Social Security fund. In such cases, the injury victim does not need to pay out anything; but these are exceptional.

With regard to hospital charges (as distinguished from charges for medical services rendered in hospitals), the principle of direct payment by the injured person has no application. If the injured person is cared for in a public hospital or in a private one which has made a standing agreement with the Social Security office, the Social Security office will pay its contribution directly to the hospital, and the injury victim need pay only the "adjustment tab" [ticket moderateur], which is the name given to that part of the expenses which is not covered by Social Security.

Prostheses are paid for directly by Social Security.

(2) The principle of partial reimbursement. In general, Social Security does not pay the whole of any proved expense. In order to discourage injured persons from making excessive demands on medical service, from buying excessive drugs, and from prolonging their hospitalization, French laws leave a part of the costs to be paid by the beneficiary. The injured person's proportional part is supposed to be about 20 percent, but very often it is more than this, and there are a few special cases in which the injured person does not have to contribute at all.

With respect to expenses for medical services, a regulation of May 12, 1960, introduced a requirement that the repayment of medical fees by Social Security offices should be made on the basis of rates fixed by agreements made between the regional offices of Social Security and the principal medical associations. The rates fixed by these agreements are supposed to be applied by all doctors who have signed the agreement and the repayment by Social Security is supposed to cover 80 percent, leaving 20 percent to be paid by the injured person.

In practice, the amount remaining to be paid by the beneficiary
is frequently much more than 20 percent because many doctors have refused to sign the agreement, and charge fees well over the ones fixed in the Social Security schedule, on the basis of which the Social Security office pays.

There is another exception in that in some very specific categories of cases, 100 percent reimbursement of medical expenses is made. This may happen, for example, when the treatment is particularly expensive, with particularly important surgery, or when the period of hospitalization is more than one month, in which case the 100 percent reimbursement begins with the second month.

With respect to pharmaceutical expenses, the rate of reimbursement varies according to the kinds of drugs. For instance, patients receive 90 percent reimbursement for trademark drugs [specialités pharmaceutiques] which have no therapeutic equivalent (for example, certain antibiotics). There is a limited list of these drugs. But patients are reimbursed at only 70 percent for trademark drugs which have a therapeutic equivalent, and at 80 percent for all other drugs, and for analyses, laboratory tests, and dressings.

Expenses of optical, orthopedic, and minor prosthetic devices are reimbursed at the rate of 80 percent.

These types of benefits in kind are given not only to accident victims who are personally covered by Social Security, but also to accident victims in the families of covered persons. Members of the family include, of course, the husband or wife of the covered person, except that medical benefits in kind are not given to spouses who are members of licensed trades or liberal professions, or who are registered traders, or who are themselves covered by Social Security. The family also includes children under 16 years who are dependent on the covered person or his spouse, and who are not wage earners. In addition to these, the coverage extends to children over 16 but under 17 who are apprentices, and to children over 16 and under 20 who are students, or who
are physically disabled from becoming wage earners. Members of the family may also include ancestors, grandchildren, and cousins who live under the same roof as the covered person and who are a part of the household.

b. Cash benefits

(1) When payable. Cash benefits are payable when there has been an interruption of work by reason of an accident, and are designed to replace the lost wages. They are measured by disability days, starting with the fourth day of disability, without excluding weekends and holidays. Cash benefits for lost wages are paid only to covered persons, and not to members of their families.

(2) Amount. The per diem cash benefit [prestation journalière] is equal to half of the basic daily wage, which is defined as the actual wage, excluding expense allowances and family allowances, not to exceed one-sixtieth of the monthly maximum wage on which Social Security taxes are based.

This is the basic per diem, and is awarded when the covered person has at least two dependent children. This benefit may be increased or decreased by reason of family responsibilities, or because of hospitalization or nonhospitalization. For instance, it rises to two-thirds of the daily wage for nonhospitalized workers who have at least three dependent children, but only after the thirtieth day of disability, and in no case rises above one forty-fifth of the monthly taxable wage. On the other hand, the per diem is reduced if the worker is hospitalized, and has less than two dependent children or ancestors to be fed at home. The reduction is one-fifth with one such dependent, and two-fifths if the worker has no dependents but his wife.

(3) Duration. Unlike the benefits in kind, which are unlimited, cash benefits continue during the period of disability for a maximum of three years. After that, they are converted into pensions. If the disability amounts to two-thirds or more of the
covered person’s capacity, the Social Security fund will pay a
disability pension varying from 30 to 40 percent of the mean
annual salary. This pension is always subject to revision and can
be suspended or terminated for medical or administrative reasons.
At the age of 60, it is replaced by an old age pension.

2. Work Accidents

Compensation for work accidents is basically similar to com­
ensation for common law accidents, and comprises both medical
benefits and cash benefits; but the benefits for work accidents are
generally more favorable.

a. Medical benefits for work accidents

In general, medical benefits for work accidents cover medical,
pharmaceutical, and hospital expenses, and in addition expenses
of change of residence. The legislation is more favorable to vic­
tims of work accidents than of "common law" accidents, espe­
cially in the greater flexibility of the provisions.

(1) The principle of direct payment by Social Security. The
covered victim of a work accident does not need to make initial
payments for medical services. The fees of druggists and doctors
are paid directly by the Social Security office. The same applies to
hospital expenses.

(2) The principle of full reimbursement. The reimbursement
covers all expenses resulting from the accident. In theory, the
accident victim pays no part of the expense, unlike the situation
in common law accidents.

b. Cash benefits

Cash benefits vary according to whether they are for tempor­
ary or permanent disabilities.

(1) Temporary disabilities. Here again the legislative pro­
visions are more favorable than for common law accidents. A
per diem benefit equal to half the wage is paid during the first
28 days; starting with the 29th day it is increased to two-thirds of
the basic wage, and is paid until the disability is terminated or stabilized (that is, when the victim is no longer foreseeably likely to progress further, either in the amelioration or aggravation of his disability). The cash benefit begins on the first working day following the accident (compared with the fourth day after a common law accident). The rate of the benefit is based on the wage earned during the period immediately preceding the injury, and is calculated on the gross salary, including the fringe benefits. The actual earnings will however be excluded from consideration if the daily wage as so calculated exceeds one percent of the annual wage on which the Social Security taxes are based. The daily wage is calculated by dividing the gross actual wage by the number of working days in the period taken as a base. If the work accident victim is hospitalized in the course of his disability, his cash benefits (unlike those of certain common law accident victims) continue unabated.

(2) Permanent disabilities. After the degree of disability is stabilized, and until the subject dies or is completely cured, a fixed disability pension is paid. The amount of the pension depends upon the extent of the disability and the amount of the actual salary received by the covered worker during the year preceding the accident. These pensions are adjusted annually by certain mathematical coefficients to keep up with changes in the cost of living.

B. SUPPLEMENTARY REPARATION REGIMES

The previous section has shown that Social Security gives less than complete reparation for the loss sustained by an accident victim. Some of the medical expenses remain to be borne by the victim himself, except in work accidents, and the cash benefits for temporary disability equal only a part of the wage loss regardless of whether the accident was of "common law" or "work" origin. Besides this, Social Security rules are very rigid, and do not adjust
themselves to the needs of particular cases with the flexibility or the rapidity which might be desired.

For these reasons, numerous systems have been developed to supplement the benefits allowed to accident victims by Social Security. There are a great many different institutions which contribute to these supplementary benefits, and many different schemes are in use. The following discussion will refer to the most frequently encountered, which are: (1) mutual benefit societies [sociétés mutualistes], and (2) health and welfare funds [institutions de prévoyance et de sécurité sociale].

1. Mutual Benefit Societies

Mutual benefit societies are organizations formed to provide the members with benefits which are supplementary to those of Social Security, in consideration of premiums paid by the members. They award both medical and cash benefits.

The medical benefits cover the repayment of all or part of expenses incurred for physicians, drugs, surgeons, dentists, hospital charges, protheses, and X rays. These benefits compensate, at least partially, for the costs which Social Security leaves to be borne by the injury victim. The mutual benefit societies are social and familial in character, their benefits in kind being available to members of the family (the spouse and dependent children).

The cash benefits consist in payment of per diem allowances which complement the benefits of Social Security. These are allowed only to the heads of families.

Mutual benefit societies are frequently joined not only by wage earners covered by Social Security but also by non-wage earners. Their benefits extend not only to illness and maternity, but also to old age, infirmity, and death.

2. Health and Welfare Funds

Health and welfare funds are organized for the purpose of providing wage earners with benefits additional to those received
under Social Security, in consideration of premiums paid by them. The benefits awarded are lump sums [capitaux], disability pensions or annuities by reason of work accidents, and pensions for widows and orphans.

These funds are based on the individual's trade or employment, in that they consist of employees of one or more business enterprises and the benefits are conferred by virtue of labor contracts, individual or collective. They are created as an incident to labor contracts made between unions and employers. They are strictly limited to wage earners, and they do not cover illness, which is considered the special preserve of the mutual benefit societies (supra), or of private insurance (infra).

C. Reparation by Employers

In many enterprises employers furnish their employees with certain benefits supplementary to those of Social Security, without regard to whether the injury results from a "common law accident" or a "work accident." The benefits are secured by employment contracts, generally collectively bargained.

The principal benefit conferred by these agreements is in practice the payment of the wage which would otherwise have been suspended as the result of an injury or illness. The payment continues for a time and at a percent which vary according to the terms of the particular contract. It is possible for the collective agreement to provide for payment of the full amount during several months. In such cases, in order to avoid a cumulation of the "sick pay" with the Social Security cash benefits, which would improperly enrich the injury victim, the employer is entitled to collect from the Social Security office the amount of the cash benefit to which the worker would otherwise be entitled. Alternatively, he may arrange to have the wage earner repay him the cash benefits received from Social Security. For instance, the national collective bargaining agreement of engineers and construction supervisors made in France on July 23, 1956, provides for full
payment of wages during 30 days after the cessation of work, subject to repayment by the beneficiary of the amounts which he receives from Social Security.

A few collective bargaining agreements use a different formula, whereby the worker can retain his per diem from the employer without giving up his benefits from Social Security.

The duration of benefits varies according to the terms of the agreement. For instance, the Renault Agreement of September 1955 gives the accident victim for a period of two months a daily benefit which is added to that of Social Security. A worker must have been employed for six months prior to the accident in order to be entitled to this benefit.

A third type of arrangement made in collective wage agreements provides simply for the continuance of benefits in kind during a suspension of work. Where this exists, the Social Security office will pay the employer for the value of the benefits conferred instead of paying the worker. The type of benefit most commonly involved is lodging in which the workman is kept during his period of temporary disability.

D. REPARATION UNDER PRIVATE INSURANCE

Insurance against bodily injuries is written in order to make good the pecuniary loss suffered by the insured through a bodily injury of any nature, either in the course of his employment or in any other circumstances. In consideration of a premium or an assessment paid by the insured, the insurer agrees to pay reparation in the form of a lump sum or a pension in the event of a described type of accident. There are many different types of insurance policies, and they vary widely in regard to the benefits which they afford. The following discussion will deal first with the principal types of policy which are being written and then with the extent of the benefits accorded.

1. Types of Policy

One type of policy provides for the repayment of medical,
surgical, pharmaceutical, and hospital expenses. Others provide for the payment of a lump sum or pension in case of permanent disability, total or partial. Most of the latter type require that the degree of disability be very high. For instance, some apply to the loss of both eyes, one eye, one or more limbs, or one eye and one limb accompanied by permanent total disability.

A few policies provide for per diem cash benefits in case of temporary disability.

2. Extent of Benefits

The extent of benefits depends on the clauses in the policy. Some provide an arbitrary benefit [remboursement forfaitaire] which is entirely independent of whatever may be received from Social Security, such as $x$ francs a day, during the duration of the disability. Others provide for a benefit which will make up the difference between that from Social Security and the total wage lost.

E. Subrogation to Tort Claims

Frequently when a person is injured as the result of either a common law accident or a work accident, the conditions are such that the person who caused the injury is personally liable for the results of it. The arbitrary benefits awarded to the injury victim by Social Security or by other insurance organizations does not in any way reduce the civil liability of the author of the harm. He remains liable to bear the entire burden of reparation insofar as he is responsible for the accident. For this reason, the courts must in the first instance fix the amount for which the tort-feasor is liable, according to the common law of liability, since this fixes the limit of the tort-feasor's obligation.

However, the injury victim is not entitled to receive from the tort-feasor more than the difference between what he has received from Social Security and the amount for which the tort-feasor is liable. The Social Security organizations have the right
to be paid by the tort-feasor within the limitation of his total liability according to common law, and the further limitation of what they themselves have paid out. In order to enforce this right, they have a cause of action against the tort-feasor to obtain repayment of the various benefits conferred on the injury victim.

The exercise of this right of subrogation has created a great number of problems in French law. However, the repayment by the tort-feasor (or his liability insurer) of ordinary benefits such as expenses for medical services and pharmaceuticals, and of per diem benefits, is made without difficulty and raises no problems. The Social Security offices generally obtain satisfaction.

On the other hand numerous difficulties have arisen with respect to payment of pensions and annuities by "Social Security organizations." According to the prevailing case law, the Social Security funds are entitled to claim against the tort-feasor only for the past installments of the annuity or pension, but not for the capital amount of the annuity or pension, since they have no obligation to pay the amount of this capital, but only the periodic amounts.

When the Social Security organizations have obtained repayment, the other insurance organizations who have paid benefits to the injury victim are entitled to claim repayment of the amounts they have paid, sharing equally among themselves. In such cases, it is prudent for the liability insurer to have a receiver [sequestre] appointed into whose hands the amount due can validly be paid. The distribution of this sum will then be made by the receiver among the various claimant organizations in proportion to their payments, to the extent that the Social Security payments have not already exhausted the fund.

F. Conclusion

These are, briefly stated, the various sources of reparation available to the victim of an automobile injury in France. It will appear that when the victim is a person covered by Social Security,
his first and foremost reliance will be the benefits of Social Security. To these benefits may be added the supplements from other insurance organizations, but the latter are not always available. It further appears that it is difficult to say, with certainty and precision, whether an accident victim will suffer a substantial eventual economic loss, or whether on the contrary the benefits which he will receive will substantially equalize his losses. The result will depend principally on two elements: (1) the extent to which the injury victim carries private insurance, outside of his Social Security coverage; (2) the degree of severity of the accident, since it is quite certain that if the victim suffers a high degree of disability or of impairment of appearance, the loss will be difficult to repair, and is for this reason likely to result in a substantial permanent impairment of economic condition.

EDITORIAL NOTE: TORT LIABILITY FOR AUTOMOBILE ACCIDENTS IN FRANCE

The preceding article by Dr. Durin does not set forth the principles of tort liability for automobile accidents, which were authoritatively explained for American readers by Professor Paul Esmein of the University of Paris in his article entitled "Liability in French Law for Damages Caused by Motor Vehicle Accidents," Am. Journ. Comp. Law, vol. 2, p. 156 (1953). See also Suzanne Tunc, "Establishment of a 'Fonds de Garantie' to Compensate Victims of Motor Vehicle Accidents," Am. Journ. Comp. Law, vol. 2, p. 232 (1953). Briefly, tort liability for automobile accidents under the Civil Code rests on three bases: (1) the operator is liable for negligence; (2) the operator's employer is vicariously liable for negligence; (3) the custodian of the vehicle (normally the owner) is presumed liable for negligence of the operator or for a defect in the vehicle; the presumption can be rebutted only by disproving both possibilities.